

1 THE HONORABLE BENJAMIN H. SETTLE  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 HP TUNERS, LLC, a Nevada limited liability) No. 3:17-cv-05760 BHS  
11 company, )  
12 Plaintiff, )  
13 vs. )  
14 KEVIN SYKES-BONNETT and SYKED )  
15 ECU TUNING INCORPORATED, a )  
16 Washington corporation, )  
17 Defendants. )  
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) **DEFENDANTS' MOTION TO COMPEL**  
Note: September 7, 2018  
) **DISCOVERY**

Defendants Kevin Sykes-Bonnet, John Martinson and Syked ECU Tuning Inc.  
(collectively "Defendants"), by its attorneys, hereby submit this Motion to Compel Plaintiff HP  
Tuners LLC ("Plaintiff") to produce documents pursuant to Fed. R. Civ. P. 37.

**I. INTRODUCTION**

In December 2017, Defendants served a request for production of documents on Plaintiff,  
where it requested documents produced in an arbitration between Plaintiff and Matthew  
Honeycutt ("Honeycutt"). Plaintiff initiated an arbitration with Honeycutt in January 2017,  
where it alleged similar allegations of breach of contract, violation of the Illinois trade secrets  
act, and tortious interference. After Plaintiff objected to Defendants' request for production, an

1 agreement was reached where Plaintiff would produce a subset of the documents that Defendants  
 2 requested. Plaintiff, however, failed to comply with this agreement. Because of Plaintiff's non-  
 3 compliance, Defendants file this motion to compel production.

## 4 II. BACKGROUND

5 On January 12, 2017 Plaintiff filed a demand for arbitration against Matthew Honeycutt  
 6 alleging various causes of action stemming from Honeycutt's alleged hacking of Plaintiff's  
 7 software. On September 20, 2017, Plaintiff filed its complaint against Defendants alleging eight  
 8 causes of action related to hacked source code, cloned tuning cables, and unauthorized tuning  
 9 credits. *See* Dkt. 1. Within its complaint, Plaintiff includes multiple allegations of a relationship  
 10 between Honeycutt and Kevin Sykes-Bonnet, and alleges that Sykes-Bonnet worked with others,  
 11 including Honeycutt, to reverse engineer and remove licensing from Plaintiff's VCM Suite  
 12 Software. *See* Dkt. 1 ¶¶ 35, 36, 45, 48, 62.

15 On December 1, 2017, Defendants requested “[a]ll documents produced by any party in  
 16 any litigation or arbitration proceeding between Plaintiff and Matthew Honeycutt” (the  
 17 “Honeycutt Documents”). Ex. A to Whitaker Decl. In its December 27, 2017 response, Plaintiff  
 18 objected to Defendants’ request for production because it called for the production of documents  
 19 that are “neither relevant nor likely to lead to the discovery or [sic] admissible evidence.” Ex. B  
 20 to Whitaker Decl. Defendants followed-up with Plaintiff regarding its objection to the Honeycutt  
 21 Documents and in the spirit of compromise, Defendants stated they were willing to accept, for  
 22 the time being, “only the pleadings in that arbitration, including any dispositive motions and any  
 23 award and opinion rendered by the arbitrator(s).” Ex. C to Whitaker Decl. Defendants specified  
 24 that “[w]e would also need *any exhibits that may have been attached to any of those pleadings.*”  
 25 *Id.* (emphasis added). After additional discussion, an agreement was reached where Plaintiff  
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would produce a subset of the Honeycutt Documents, including the pleadings, dispositive motions, and exhibits to the dispositive motions on July 13, 2018—more than six months after Defendants' initial request for production. *See Ex. D to Whitaker Decl.* On July 12, however, Plaintiff only produced the Rule 27 briefing<sup>1</sup> from the Honeycutt arbitration without any exhibits from that briefing. Defendants followed up with Plaintiff about the missing exhibits but Plaintiff disputed that it agreed to produce the exhibits to the Honeycutt Rule 27 briefing. *See Exs. E, F to Whitaker Decl.* At Plaintiff's request, Defendants' provided a list of the missing exhibits but have received no response. *See Ex. F to Whitaker Decl.*

### **III. ARGUMENT**

#### **A. Legal Standard**

Under Rule 26, the “scope of discovery is broad.” *See Otos v. WHPacific, Inc.*, 2017 WL 2452008, at \*1 (W.D. Wash. June 6, 2017). A party must respond to any discovery request and produce any non-privileged documents that are relevant to an issue in a case. *See Westport Insurance Co. v. Hippo Fleming & Pertile Law Offices*, 319 F.R.D. 214, 216-17 (W.D. Penn. 2017); *see also* FED. R. CIV. P. 26(b)(1). “If an opposing party fails to fully respond to a discovery request, Fed. R. Civ. P. 37 enables the party seeking discovery to bring a motion to compel disclosure or discovery.” *Rookaird v. BNSF Railway Co.*, 2015 WL 11233670, at \*1 (W.D. Wash. June 2, 2015). “On a motion to compel responses to discovery requests, the party opposing discovery bears the burden of resisting disclosure.” *Id.* (citing *Rogers v. Giurbino*, 288 F.R.D. 469, 479 (C.D. Cal. 2012)). But the moving party bears the burden of informing the court which discovery requests are the subject of the motion to compel, why the information is relevant, and

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<sup>1</sup> Specifically, Plaintiff produced Honeycutt’s opening Rule 27 brief, Plaintiff’s Opposition, Honeycutt’s Reply, Honeycutt’s supplemental brief, Plaintiff’s supplemental brief and the Arbitrator’s Order. *See Whitaker Decl.*

1 why the responding party's objections are not meritorious. *See Hancock v. Aetna Life Insurance*  
 2 *Co.*, 321 F.R.D. 383, 390 (W.D. Wash. 2017).

3 **B. Plaintiff Should Be Ordered to Produce the Documents It Agreed To**

4 Plaintiff should be compelled to produce exhibits to the Rule 27 briefing from  
 5 Honeycutt's arbitration. Plaintiff agreed to produce these exhibits and should be required to  
 6 abide by its agreement.  
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8 **1. Discovery Request at Issue**

9 Defendants' second request for production requested all documents produced by any  
 10 party in the arbitration proceedings between Plaintiff and Honeycutt. *See Ex. A to Whitaker*  
 11 *Decl.* After Plaintiff objected to the production of all documents as irrelevant, Defendants sought  
 12 a compromise. *See Ex. C to Whitaker Decl.* Defendants stated they were "willing to accept, for  
 13 now, only the pleadings in that arbitration, including any dispositive motions and any award and  
 14 opinion rendered by the arbitrator(s)." *Id.* Defendants also stated that they would "need any  
 15 exhibits that may have been attached to any of those pleadings." *Id.* Plaintiff responded that  
 16 they would produce some of the pleadings from the Honeycutt arbitration, including briefing  
 17 related to Honeycutt's Rule 27 motion. Plaintiff, however, failed to produce the exhibits to the  
 18 Rule 27 briefing and dispute that they agreed to do so. *See Ex. F to Whitaker Decl.* Defendants  
 19 request that the Court compel Plaintiff to produce all exhibits incorporated in the Rule 27 briefing  
 20 from the Honeycutt arbitration.  
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22 **2. Relevance of the Requested Information**

23 The documents that Defendants request are highly relevant to the causes of action in  
 24 Plaintiff's complaint. In its complaint, Plaintiff specifically alleges that "Sykes-Bonnett has  
 25 worked with others, including but not limited to Christopher Breton-Jean and *Matthew Honeycutt*  
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1 to reverse engineer and remove licensing from HPT's VCM Suite Software and to distribute it  
 2 for their own profit as well as attempt to cause harm to HPT as a company, which they view as  
 3 competitors." Dkt. 1 ¶ 62 (emphasis added). This allegation is directly relevant to at least counts  
 4 1-4 in Plaintiff's complaint—all of which incorporate Plaintiff's allegation that Defendants  
 5 hacked Plaintiff's source code. *See, e.g., id.* ¶¶ 74, 94, 109, 124. Because Plaintiff alleges that  
 6 Defendants acted in concert with Honeycutt to hack Plaintiff's software, briefing and exhibits  
 7 from Honeycutt's arbitration where Honeycutt disputes these nearly-identical allegations are  
 8 highly relevant.

10 Additionally, Defendants believe that some of the exhibits withheld by Plaintiff are highly  
 11 relevant to Plaintiff's renewed motion for a temporary restraining order. *See* Dkt. 62. These  
 12 exhibits act as support for statements in the Rule 27 briefing such as "[t]here are persons with  
 13 the skill to hack HPT's products and many have done so over the years" and evidence of  
 14 discussions between hackers of Plaintiff's software and Keith Prociuk. *See* Whitaker Decl.  
 15 Defendants believe that multiple exhibits they requested will show that Plaintiff was aware of  
 16 several previously successful hacking attempts, which is relevant to a potential laches defense to  
 17 Plaintiff's temporary restraining order.

### 19           **3. Plaintiff's Objection Lacks Merit**

20           In Plaintiff's response to Defendants' second request for production, it states that the  
 21 "Request calls for the production of documents which are neither relevant nor likely to lead to  
 22 the discovery or [sic] admissible evidence." *See* Ex. B to Whitaker Decl. Plaintiff's argument  
 23 that the exhibits to the Honeycutt briefing are not relevant lacks merit. Plaintiff's complaint  
 24 includes multiple allegations about Defendants working in concert with Honeycutt to hack its  
 25 source code, which is the basis for multiple causes of action in Plaintiff's complaint. On this  
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1 basis alone, the documents that Defendants request are relevant. Any objection to the contrary  
2 is meritless.

3 **IV. CONCLUSION**

4 For the reasons stated above, Defendants respectfully request that this Court compel  
5 Plaintiff to produce all exhibits submitted by either party with any pleading in the Matt Honeycutt  
6 arbitration. These exhibits are highly relevant to the causes of action asserted against Defendants.  
7

8 DATED: August 21, 2018

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16 Attorneys for Defendants Kevin Sykes-  
17 Bonnett, John Martinson and Syked ECU  
Tuning Incorporated

## **CERTIFICATE OF CONFERENCE**

I hereby certify that on January 4, 2018 Tiffany Connors and I met and conferred with Andrew Bleiman, counsel for HP Tuners, LLC in compliance with Local Rule 37(a)(1) via a telephonic conference call to discuss Plaintiff's response and objection to Defendants' Request for Production at issue in this Motion.

DATED: August 21, 2018

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John Martinson and Syked ECU Tuning  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on August 21, 2018 I electronically filed the above with the Clerk of the Court using the CM/ECF system. In accordance with their ECF registration agreement and the Court's ruling, the Clerk of the Court will send email notification of such filing to the following persons:

<b>Attorneys for Plaintiff HP TUNERS, LLC</b>	<input checked="" type="checkbox"/>	by CM/ECF
Stephen G. Leatham, WSBA No. 15572	<input type="checkbox"/>	by Electronic Mail
Heurlin, Potter, Jahn, Leatham, Holtmann &	<input type="checkbox"/>	by Facsimile Transmission
Stoker, P.S.	<input type="checkbox"/>	by First Class Mail
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<b>Attorneys for Plaintiff HP TUNERS, LLC</b>	<input checked="" type="checkbox"/>	by CM/ECF
Andrew P. Bleiman ( <i>pro hac vice</i> admitted)	<input type="checkbox"/>	by Electronic Mail
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Executed on August 21, 2018, at Seattle, Washington.

*s/Kathi Milner*

## Kathi Milner, Legal Assistant